

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DARYL BERRY,

Plaintiff,

v.

J. WHITE, *et al.*,

Defendants.

CASE NO. C14-1015-JCC

ORDER

This matter comes before the Court on the Report and Recommendation (Dkt. No. 5) of the Honorable Mary Alice Theiler, United States Magistrate Judge. Judge Theiler recommends that the Court deny Plaintiff's motion to proceed *in forma pauperis* and dismiss his proposed § 1983 complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) because it "appears clear from the face of the complaint that the claims asserted by plaintiff call into question the lawfulness of his conviction on state court criminal charges[, even though] plaintiff has not demonstrated that his conviction or sentence has been reversed, expunged, invalidated, or impugned in any way." (Dkt. No. 5 at 2 (citing *Heck v. Humphrey*, 512 U.S. 477 (1994).) Plaintiff did not file any objections to Judge Theiler's Report and Recommendation, though he did send two letters to the Court in which he requests assistance in bringing a lawsuit because he believes he is unable to competently represent himself. (Dkt. Nos. 6, 7.) He requests the right to further pursue his lawsuit after a decision has been made by the state courts on the appeal of his criminal

1 conviction. (Dkt. No. 7.)

2       The Court has reviewed the Report and Recommendation, Plaintiff's complaint, and  
3 Plaintiff's subsequent filings. Nothing in Plaintiff's letters to the Court provides a basis for  
4 rejecting Judge Theiler's Report and Recommendation. The Court is sympathetic to Mr. Berry's  
5 stated need for assistance in bringing a future lawsuit on an appropriate basis, and will  
6 accordingly direct the Clerk to provide Plaintiff with a copy of this district's *pro se* litigation  
7 guide. That document will assist Plaintiff in determining how to bring an appropriate collateral  
8 challenge under 28 U.S.C. § 2254 to his state court conviction or, as future circumstances may  
9 warrant, a civil action under 42 U.S.C. § 1983. The Court also notes that in any future lawsuit,  
10 Mr. Berry may request that the Court appoint counsel on his behalf. Nonetheless, a review of  
11 Plaintiff's proposed complaint and Judge Theiler's Report and Recommendation make clear that  
12 the proposed complaint as submitted provides no basis for Plaintiff to proceed with this action *in*  
13 *forma pauperis*. Accordingly, the Court hereby finds and ORDERS as follows:

14       (1)     The Court ADOPTS the Report and Recommendation;

15       (2)     Plaintiff's complaint (Dkt. No. 1) and this action are DISMISSED without  
16 prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii);

17       (3)     The Clerk is respectfully directed to provide Plaintiff with a copy of this district's  
18 *pro se* litigation guide; and

19       (4)     The Clerk is respectfully directed to send copies of this Order to Plaintiff and to  
20 Judge Theiler.

21 //

22 //

23 //

24 //

25 //

26 //

1 DATED this 27th day of August 2014.

2  
3  
4  
5  
6  
7 

8 John C. Coughenour  
9 UNITED STATES DISTRICT JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26